

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CHARLES NORWOOD,
aka MS. CHELSY,

Plaintiff,

v.

DR. TOBIASZ, DR. GARBELMAN,
DR. CALLISTER, MR. POLLARD,
JAMES MUENCHOW, CYNTHIA THORPE,
MICHAEL MEISNER, DON STRAHOTA,
WELCOME ROSE, MELISSA ROBERTS
and SCHWOCHERT,

Defendants.

ORDER

11-cv-507-bbc

Judgment was entered in this case on November 16, 2012, granting defendants' motion for summary judgment. Now plaintiff Charles Norwood has filed a "Notice to Reserve the Right to Appeal" in which she states that she¹ wishes to appeal this court's decision, but because her property was withheld from November 21, 2012 until December 3, 2012, she could not file a formal notice of appeal. Dkt. #80. From plaintiff's statements, I conclude that it is appropriate to construe her submission as a notice of appeal. In addition, because plaintiff has not paid the \$455 fee for filing a notice of appeal, I construe

¹ Plaintiff refers to herself as a "transsexual female, so I will refer to plaintiff using female pronouns.

the notice as including a request for leave to proceed in forma pauperis on appeal. A district court has authority to deny a request for leave to proceed in forma pauperis under 28 U.S.C. § 1915 for one or more of the following reasons: the litigant wishing to take an appeal has not established indigence, the appeal is in bad faith or the litigant is a prisoner and has three strikes. § 1915(a)(1),(3) and (g). Sperow v. Melvin, 153 F.3d 780, 781 (7th Cir. 1998). Plaintiff has accumulated the following three strikes: Norwood v. Hamblin, 04-cv-813-bbc (November 24, 2004); Norwood v. Hamblin, 04-cv-846-bbc (November 24, 2004); and Norwood v. Hamblin, 04-cv-854-bbc (December 2, 2004).

Because plaintiff has accumulated three strikes, she cannot file any new lawsuit or an appeal without prepaying the filing fee so long as she is incarcerated unless she can show that she is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). Plaintiff has not made the required showing of imminent danger of a serious physical injury in this case; the facts adduced by the parties at summary judgment showed that plaintiff is now receiving the hormone treatment that she had previously requested. Therefore, she cannot take advantage of the initial partial payment provision of § 1915. She owes the \$455 fee in full immediately.

Plaintiff may delay payment of the \$455 fee under one other circumstance; that is, if she challenges in the court of appeals within thirty days of the date she receives this order the decision to deny her request for leave to proceed in forma pauperis on appeal because of her § 1915(g) status. Fed. R. App. P. 24(a)(5). If the court of appeals decides that plaintiff does not have three strikes, then the matter will be remanded to this court for a

determination whether plaintiff's appeal is taken in good faith. If the court of appeals determines that the district court was correct in finding that § 1915(g) bars plaintiff from taking her appeal in forma pauperis, the \$455 filing fee payment will be due in full immediately. Whatever the scenario, plaintiff is responsible for insuring that the required sum is remitted to the court at the appropriate time.

ORDER

IT IS ORDERED that plaintiff Charles Norwood's request for leave to proceed in forma pauperis on appeal is DENIED because three strikes have been recorded against plaintiff under 28 U.S.C. § 1915(g). Further, IT IS ORDERED that the clerk of court insure that plaintiff's obligation to pay the \$455 is reflected in this court's financial records.

Entered this 13th day of December, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge